



Pennsylvania Department of Environmental Protection

909 Elmerton Avenue
Harrisburg, PA 17110-8200
May 11, 2006

Southcentral Regional Office

717-705-4706
FAX - 717-705-4930

Ms. Linda Matyskeila, Project Manager
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA, 19103-2029

Re: Universal Friction (Fka Raymark Industries, Inc.)
EPA ID No. PAD003015328
Manheim Borough, Lancaster County

Dear Linda,

As you requested, enclosed is a copy of the Consent Order & Agreement signed between Phoenix Group, LLC & Phoenix Group II, LLC and the Department back in 2001 for your files. If you have any questions, please call me at 717-705-4919.

Sincerely,

Linda D. Houseal
Facilities Supervisor
Waste Management Program





Pennsylvania Department of Environmental Protection

Office of Chief Counsel
3rd Floor
909 Elmerton Avenue
Harrisburg, Pennsylvania 17110-8200
January 25, 2001

Southcentral Regional Office

Telephone: (717) 787-8790
Telecopier: (717) 772-2400

Via Panafax & U.S. Mail

Janet S. Kole, Esquire
900 Haddon Avenue
Suite 412
The Stationhouse
Collingswood, NJ 08108

Re: Consent Order and Agreement for
Former Raymark Manheim Facility

Dear Janet:

Please find enclosed a copy of a fully-endorsed Consent Order and Agreement between the Department and the Phoenix Group regarding the former Raymark Industries site. Thank you for your cooperation in pulling this Agreement together. We look forward to the remediation of contamination at this site and the property being put back into productive use for the benefit of the community.

Sincerely,

Martin R. Siegel
Assistant Counsel

MRS:ah

Enclosure

cc: Gary Silversmith (via fax)
Tom Showers (via fax)



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

Phoenix Group, LLC	:	Raymark Industries Site;
Phoenix Group II, LLC	:	Manheim, Lancaster County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 25th day of January 2001, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), and Phoenix Group, LLC and Phoenix Group II LLC (collectively "Buyer").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.1 et seq. ("Clean Streams Law"); the Hazardous Sites Cleanup Act, Act of October 18, 1988, P.L. 756, No. 108, as amended, 35 P.S. §§ 6020.101 et seq. ("HSCA"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, 35 P.S. §§ 6018.101 et seq.; the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. §§ 6026.101 et seq. ("Act 2"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code"), and the rules and regulations promulgated thereunder.

B. Phoenix Group, LLC and Phoenix Group II, LLC are corporations with a business address of 2600 Virginia Avenue N.W., Suite 606, Washington, D.C. 20037. Buyer is in the business of developing contaminated sites. For the purposes

of this Consent Order and Agreement, the term "Buyer" includes Phoenix's successors and assigns.

C. The Property consists of approximately 95 acres and all improvements thereon, and is located at Manheim Borough, Lancaster County, Commonwealth of Pennsylvania, Tax Parcel Nos. 8H-1-1, 8H-3-4, 8H2-7-15, 8H2-7-16, 8H2-7-17, 8H2-11-6, 7H14-9-25, 7H-13-21, and 8H2-11-2 and tax parcel and 8H2-6. A legal description of the Property is attached as Appendix A.

D. The Buyer intends to obtain legal possession of the Property via a purchase pursuant to Section 363 of the federal Bankruptcy Code from the Trustee of Raymark Industries, acting in accordance with an order of the United States Bankruptcy Court for the District of Connecticut for the purpose of undertaking Property redevelopment, economic reuse, remediation in accordance with the requirements of Act 2, and implementation of closure/post-closure requirements.

E. Property contamination is more particularly described in the Site Characterization Report, RT Project Number 2708-01 dated June 2000 (the "Site Characterization Report"), a copy of which is attached as Appendix B and which is incorporated by reference. The Department has also approved a Sampling and Analysis dated January 24, 2001 that the Buyer will implement, a copy of which is attached as Appendix C and which is incorporated by reference.

F. Raymark Industries engaged in a variety of manufacturing and fabrication activities at the Property for more than fifty years. As a result of those historic manufacturing and fabrication activities, there were releases of hazardous substances and contaminants. These releases have contaminated groundwater, soil, sediments, and surface water at or in the vicinity of the Property and have adversely impacted wetlands at or in the vicinity of the Property.

G. The Property has been the subject of a Phase I Environmental Site Investigation (Environmental Laboratories, Inc., 1995), the Site Characterization Report, underground storage tank removal and corrective action, and landfill closure and post-closure activity. The Plan for necessary additional post-closure care is attached at Appendix D.

H. On March 18, 1998 Raymark Industries filed a petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Utah. This case was then transferred to the United States Bankruptcy Court for the District of Connecticut by an Order entered on or about July 1, 1998. On or about October 7, 1998, the Court directed the United States Trustee to appoint a Chapter 11 Trustee (the "Raymark Industries Trustee"). The Raymark Industries Trustee was formally appointed on or about October 15, 1998, and is duly authorized to sell the Property, subject to Court approval.

I. There is a threat to the public health and the environment from the continued release and threat of release of hazardous substances and contaminants at the Property.

J. Buyer intends to implement the post-closure plan and achieve an Act 2 standard, or combination of standards, for the remainder of the Property.

K. Buyer represents to the Department that it did not cause or contribute to, and is not otherwise liable or responsible under environmental law for the identified contamination of the Property. The Department is not aware of any information to the contrary that would indicate such liability or responsibility.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the

parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Buyer as follows:

1. *Authority.* This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, 402, and 601 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, and 691.601; Sections 505 and 706 of HSCA, 35 P.S. §§ 6020.505 and 6020.706; Section 104 and 602 of the SWMA, 35 P.S. §§ 6018.104 and 6018.602; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. *Findings.*

1.1 Buyer agrees that the findings in Paragraphs A through J K are true and correct and, in any matter or proceeding involving Buyer and the Department, Buyer shall not challenge the accuracy or validity of these findings.

2. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. *Work to be Performed.* Buyer shall perform the following tasks, according to the following schedule:

a. By January 10, 2001, shall submit a Notice of Intent to Remediate the Property pursuant to Act 2;

b. Implement the requirements set forth in the approved Work Plan for Additional Site Characterization;

c. Submit a final report demonstrating attainment of an Act 2 standard, or combination of standards, by January 10, 2003, or other date agreed to by Buyer and the Department.

d. Implement the Post-Closure Plan for the hazardous waste landfill, including the provision of adequate financial assurances consistent with

applicable regulations.

e. Remove all drums containing solid waste within 180 days of the date Buyer takes title and possession of the Property.

4. *Submissions.* All submissions by Buyer approved by the Department, including reports, plans, and schedules, are incorporated into and enforceable under this Consent Order and Agreement.

5. *Stipulated Civil Penalties.*

a. In the event Buyer fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, it shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100 per day for each violation.

b. Stipulated civil penalty payments shall be payable monthly on or before the fifteenth day of each succeeding month, and shall be paid by corporate check or the like made payable to the Pennsylvania Department of Environmental Protection and sent to the address identified in Paragraph 17.

c. Any payment under this paragraph shall neither waive Buyer's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel Buyer's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only Buyer's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated penalties shall be due automatically and without notice.

6. *Additional Remedies.*

a. In the event Buyer fails to comply with any provision of this

Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement. Buyer consents to the jurisdiction of the courts of the Commonwealth of Pennsylvania for the purpose of enforcing this Consent Order and Agreement, collecting stipulated penalties, or any other action related to the Property.

b. The remedies provided by this paragraph and Paragraph 5 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

7. *Covenant Not To Sue.* Provided that Buyer complies with the obligations in Consent Order and Agreement, and subject to the limitations in Paragraphs 6, and 8-11 below, the Department hereby covenants not to sue or take administrative action against Buyer under the environmental laws of the Commonwealth of Pennsylvania listed in Paragraph A above because of Buyer's ownership interest in the Property for remediation of the identified contamination. This covenant not to sue is null and void if the Department determines that Buyer, its agents, employees or representatives caused or contributed to the identified contamination or submitted false information to the Department. When the final report has received the Department's approval, the liability protection afforded by Section 501 of Act 2 shall be conferred on Buyer, and this covenant not to sue shall become null and void.

8. *Department's Reservation of Rights.* Notwithstanding any other provision of

this Consent Order and Agreement, the Department reserves the right to sue Buyer or to issue an administrative order to Buyer to 1) perform response actions at the Property; and/or 2) reimburse the Department for response costs at the Property, if:

a. The Department receives previously unknown information that indicates that Buyer contributed hazardous substances to the Property; or

b. Buyer, including its officers, directors, employees, agents, or contractors have made or make an incomplete, false, or in any material respect, inaccurate representation or statement in a record, report, or document relating to the release and threatened release of hazardous substances at the Property.

9. The Department's covenants not to sue in Paragraph 7 shall not apply to the following claims by the Department against Buyer for:

a. Failure to meet the requirements of this Consent Order and Agreement;

b. Past, present, or future releases or threatened releases of hazardous substances or contaminants outside the boundaries of the Property, except as otherwise specifically identified in the Site Characterization Report and amendments thereto relative to the pre-1980 waste disposal area;

c. Past, present, or future violations of federal or state criminal law;

d. Contamination that poses a threat, or potential threat, to human health or the environment not previously identified at the Property.

10. With regard to all matters not expressly addressed in this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil, and criminal actions for any past, present, or future violation of any statute, regulation, permit or order, or for any pollution or potential pollution to the air, land, or waters of the Commonwealth of Pennsylvania.

11. *Additional Reservation of Rights.* The Department reserves the right to require additional measures to achieve compliance with applicable law. Buyer reserves the right to challenge any action which the Department may take to require those measures. In addition, the Department reserves the right to terminate this Consent Order and Agreement and/or undertake response actions pursuant to HSCA at the Property in the event of Buyer's noncompliance with this Consent Order and Agreement.

12. *Buyer's Covenants Not to Sue.* Buyer covenants not to sue and shall not assert any claims, demands or causes of action, in law or in equity, against the Commonwealth government and/or the Raymark Industries Trustee arising from the release and threatened release of hazardous substances or contaminants at the Property, arising out of the response actions at or from the Property, or arising out of this Consent Order and Agreement. This covenant not to sue extends only to the Commonwealth government and/or the Raymark Industries Trustee and does not extend to any other person.

13. *Waiver of Other Claims By Buyer.* Buyer shall not assert any claims for reimbursement, contribution, and/or indemnity from the Pennsylvania Hazardous Sites Cleanup Fund for matters arising from the release and threatened release of hazardous substances and contaminants at or from the Property, arising out of the response actions at the Property, or arising out of this Consent Order and Agreement.

14. *Property Access.* Buyer grants to the Department the right to enter onto the Property to observe, inspect, and verify the remediation, closure, and post-closure activities to be carried out pursuant to this Consent Order and Agreement and to conduct further investigation and remediation of contamination at the

Property.

15. *Liability of Buyer.* Buyer shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Buyer also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

16. *Transfer of Property.*

a. Buyer's duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Property, or any part thereof.

b. If Buyer intends to transfer any legal or equitable interest in the Property which is affected by this Consent Order and Agreement, Buyer shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southcentral Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate Buyer's duties and obligations under this Consent Order and Agreement upon transfer of the Property. Buyer waives any right that it may have to challenge the Department's decision in this regard.

17. *Correspondence with the Department.* All correspondence with the Department concerning this Consent Order and Agreement shall be mailed or hand delivered to:

Patricia Romano
Environmental Cleanup Program
Southcentral Regional Office

PA Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4833

All correspondence related to the closure and post closure activities shall also be mailed or hand delivered to:

Robert Benvin
Waste Management Program
Southcentral Regional Office
PA Department of Environmental Protection
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4937

All such correspondence shall be clearly labeled as relating to the Property.

18. *Correspondence with Buyer.* All correspondence with Buyer concerning this Consent Order and Agreement shall be addressed to:

Phoenix Group, LLC
2600 Virginia Avenue, N.W.
Suite 606
Washington, D.C. 20037
Telephone No. (202) 337-7300
Facsimile No. (202) 429-5290

with copies to:

Phoenix Group, LLC
c/o The Triangle Group
1930 East Marlton Pike
Suite Q16
Cherry Hill, NJ 08003
Telephone No. (856) 489-4018
Facsimile No. (856) 797-6966

Buyer shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address. Buyer consents to mailing by first class U.S. Mail to the above address as constituting adequate service

of process for legal proceedings arising out of or related to this Consent Order and Agreement.

19. *Severability.* The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

20. *Entire Consent Order and Agreement.* This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. The parties specifically acknowledge and agree that Buyer shall have no liability under or responsibility for compliance with, any past, present, or future permits, orders, or judgments issued to or obtained by the Commonwealth against Raymark Industries that relate to environmental compliance and conditions on or about the Property. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

21. *Attorney Fees.* The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

22. *Modifications.* No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto. Buyer may request changes in schedules approved by the Department pursuant to this Consent Order and Agreement. The Department agrees to respond to any such request in writing and not to act in an arbitrary or capricious manner in its review of any such request.

23. *Titles.* A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but

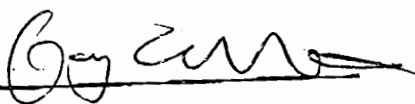
shall not be treated as controlling.

24. *Decisions under Consent Order.* Any decision which the Department makes under the provisions of this Consent Order and Agreement, except a disapproval of a final report submitted pursuant to Act 2, is intended to be neither a final action under 25 Pa.Code § 1021.2, nor an adjudication under 2 Pa.C.S. § 101. Any objection which Buyer may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

25. *Effective Date.* This Consent Order and Agreement shall be effective upon execution by the Department.

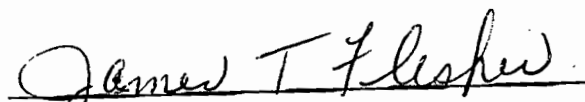
IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of Buyer certify under penalty of law, as provided by 18 Pa.C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of Buyer ; that Buyer consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that Buyer hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa.C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law.

FOR PHOENIX GROUP, LLC AND PHOENIX GROUP II, LLC

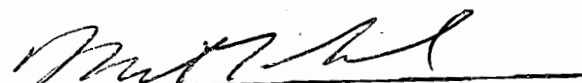

By: President Gary Silversmith

DATED: 12-22-00

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:


James T. Fleisher
Manager
Environmental Cleanup Program

DATED: 1-25-01


Martin R. Siegel
Assistant Counsel

DATED: 1-25-01